

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1064 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SUDHIR CHIMANLAL & 3 OTHERS....Appellants

Versus

OFFICER ON SPECIAL DUTY, AHMEDABAD...Respondent

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Appearance:

MR VJ DESAI for Petitioners

MR UMESH TRIVEDI, ADDL GOVERNMENT PLEADER  
for Respondent.

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 07/04/97

#### ORAL JUDGEMENT

The land of the appellants came to be acquired in the year 1976 for establishing necessary Industrial Unit by the Gujarat Industrial Development Corporation. The land acquisition proceeding was taken on hand and compensation came to be awarded by the Special Land Acquisition Officer at the rate of Rs.160/- per Guntha. The reference was prayed for. After receipt of the

reference, the then Assistant Judge at Bharuch on 18th October, 1980 enhanced the compensation awarding the same at the rate of Rs.325/- per Guntha. The appellants were not satisfied, as they wanted to have the compensation at the rate of Rs.500/- per Guntha, consequently the present appeal is filed.

2. The Gujarat Industrial Development Corporation at Ankleshwar wanted to expand the industrial area, and therefore, necessary plan was prepared. As per that plan, certain lands were required to be acquired. A proposal for necessary sanction was then made. The Government accorded the sanction. Thereafter necessary notification under Sec.4 of the Land Acquisition Act was issued on 23rd April, 1976 which came to be published in the Government Gazette on 8th July, 1986. Another notification under Sec.6 of the Land Acquisition Act was issued on 12th December, 1977 which came to be published in the Government Gazette on 2nd February, 1978. As per that notification, several lands of Bhadkodara village were acquired. The land bearing Survey No. 200/3 belonging to the present appellants also came to be acquired. The area of that land acquired was 89 Are - 55 Sq. Mts. After acquisition of the lands, the Special Land Acquisition Officer initiated land acquisition cases for fixation of reasonable amount of compensation. The Special Land Acquisition Officer served the concerned persons with notices under Sec.9 of the Land Acquisition Act. The appellants on being served with the notices appeared before the Special Land Acquisition Officer and submitted that looking to the several advantages of the land, compensation at the rate of Rs.500/- per Guntha might be awarded. The learned Special Land Acquisition Officer, considering the materials before him, awarded the compensation at the rate of Rs.160/- per Guntha on 2nd May, 1979. The appellants found that the compensation awarded was meagre, and therefore, they prayed for necessary reference under Sec.18 of the Land Acquisition Act to the District Court at Bharuch. The reference was then made which came to be numbered as Land Reference Case No. 284 of 1979. Likewise other references were also made, because the other claimants whose lands were acquired alongwith the land of the appellants also prayed for the references. In all 10 References were made and all those references were assigned to the then learned Assistant Judge at Bharuch for hearing and disposal in accordance with law. The then Learned Assistant Judge then heard all the References together recording evidence in Land Reference Case No. 292 of 1979 and disposed of all the ten References by a common judgment, whereby he awarded the

compensation at the rate of Rs.325/- per Guntha. Though the compensation was enhanced, the appellants found that whatever amounts were awarded, were not to their expectations and satisfaction, as their land was of a high quality and they ought to have been awarded the compensation at the rate of Rs.500/- per Guntha. Being aggrieved by such judgment and award, they have preferred the present appeal before this court.

3. Assailing the judgment and award of the lower court, Mr. Desai, the learned advocate representing the appellants submits that certain other lands for the development of G.I.D.C.Estate at Ankleshwar are also acquired from the very village called Bhadkodara and those lands are also situated close to the lands in question. In that case, the claimants feeling aggrieved by the judgment and award passed by the Assistant Judge at Bharuch in Land Reference Case No.40 of 1978, had preferred First Appeal No. 1549 of 1979 wherein this court was pleased to enhance the compensation at Rs.25/- fixing the same at Rs. 350/- per Guntha. When for the likewise land, this court held that the compensation at the rate of Rs. 350/- per Guntha was just and reasonable, it would be most appropriate, just and fair to award the compensation in consonance with the decision of this court. Against such submission, Mr. Trivedi, the learned AGP has contended that the decision of this court cannot be pressed into the services of the appellants, because the lands in that case were acquired under a different notification and not only the references made were different but were tried and decided on different facts and circumstances as well as factors. The decision of this Court is, therefore, not comparable.

4. Before I proceed, it should be made clear as to how ordinarily valuation of the property acquired can be made. The cardinal principle which the court should bear in mind is what the willing vendor would expect, and what the willing purchaser would like to pay, having regard to the condition, distance, situation, area, size, facilities, future development, possibility of multipurpose use, convenience, net return of the investment, and present as well as future value of the land. Such law is made clear by several authorities of the Supreme Court and High Courts. To assess adequate compensation, market value of the land has to be ascertained, and for that comparable sale instances of surrounding lands should be considered. If that best method is not possible to be resorted to, the next method in the alternative, will be of capitalization on the basis of average net income, and reasonable return of the

investment; and lastly to rely upon the expert's opinion. The method of valuation by ascertaining the annual income cannot be said to be most exact or adequate, but if no way is out, the same has to be resorted to. Further, the court is expected to bear in mind falling value of a rupee. The person losing the property should not feel that he gets a smaller part of the rupee, and not rupee in full. If necessary, the court can consider the awards passed by the competent court in other cases, with regard to the nearby properties comparable with regard to material aspects and decide just compensation.

5. Recently, the Supreme Court has also in the case of Land Acquisition Officer, Eluru etc. vs. Smt. Jasti Rohini & Anr. etc., JT 1995(2) SC 339, reaffirming the above stated view, made it further clear about the method of fixation of the adequate value of the land acquired, that the sale instances must be bonafide and not manipulated sales of the land in the neighbourhood possessed of same or similar quality, and having the same or similar advantages. The sale and the contents of the sale-deed must be established as a fact by examining either the vendor or the vendee. Mere marking of certified copies of the sale-deeds are not the proof of either the contents or the circumstances in which it came to be executed. A bonafide sale or series of sales of small pieces of land do not furnish the sole basis to determine the market value. The court should not be influenced by the future or latter development in the locality or neighbourhood, and should not get influenced by the prevailing situation as on the date of determination of the compensation. This consideration should alone be confined to the market value prevailing as on the date of the notification u/s. 4. In the another case of P.Ram Reddy etc. Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad etc., JT 1995(1) SC 593, it is laid down that the market value of the land must relate to the last of the dates of publication of Notification or giving of public notice of substance of such Notification according to Sec.4. The building potentiality of the land can also be considered; but it should be either immediately or in the near future, but not in the distant future. In this regard, the materials on record must necessarily relate to the matters, such as-

"(i) the situation of the acquired land  
vis-a-vis, the city, or the town, or village  
which had been growing in size because of its  
commercial industrial, educational, religious or  
any other kind of importance, or because of its

explosive population;

- (ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;
- (iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;
- (iv) absence of statutory impediments or the like for using the acquired land for building purposes;
- (v) existence of high ways, public roads, lay outs of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;
- (vi) benefits or advantages of educational institutions, health care centres or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and
- (vii) lands around the acquired land or the acquired land itself being in demand for building purpose, to specify a few."

If on record, the sale instances of the building plot in a developed lay out of a building plot in the vicinity is brought on record, the whole-sale market value of the acquired land with building potentiality would be at 1/3 or 1/2 of the retail price got by genuine sales of plots in a developed lay-out in the vicinity. By deducting 2/3 to 1/2 out of the retail prices of plots as losses or expenses involved in having made the land where the plots are formed as developed according to the degree of development. It is because it is a matter of common knowledge that, if the large extents of lands are to be sold, they cannot fetch the value which may be fetched by sale of small extents of land. Here in this case, the claimants have preferred to base their claim on the market value of the lands in the neighbourhood and therefore, as per the above stated law made clear by the Supreme Court and other High Courts, the evidence will have to be appreciated.

6. In view of the such law, the compensation has to be assessed. In the case on hand, the appellants rely upon the award passed by this court. If the award on

which the appellants rely is comparable in all respect, certainly the same can be taken into account and on that base, compensation can be awarded.

7. For the development of G.I.D.C. at Ankleshwar, the lands were required to be acquired, and so from village Bhadkodara, several lands were acquired from the same area. For certain lands, a notification in January 1976 was published. While for rest of the lands inclusive of the lands of the present appellants, the notification under Sec.4 came to be published on 8th July, 1976. But different notification in no way can be a ground to hold that the awards passed in former references are not comparable. For assessing the prevailing market value of the similar lands in the area, when the notification u/s.4 came to be issued, if the award is found to be the cynosure, on relevant factors governing the assessment of the value, it can well be said to be comparable, and reliance thereon can be placed. It may be stated that the learned Judge for the purpose of fixation of market value rightly placed reliance on the award as he found the factors governing the fixation of just market value were the same in the case on hand and in the cases in which the award relied upon is passed. I am in general agreement with the same and so it is not necessary for me to restate the same. However, it would be better in short, if I deal with those factors. The land of the appellants bears Survey No. 200/3, while the land in which this court, as mentioned above, passed the award, bears Survey No. 169. Both the lands are situated in the same area and nearer to each other. The lands of the appellants and the lands relating to the case in which this court passed the award, are near to the Railway line and National Highway. The Narrow Gauge Railway Line is also near to this land. The road to Valiya is also near to this land. The level of the lands are also the same. The industrial activity commenced in this area since 1953. The factories in the area are also situated near the lands. This court, considering the relevant sale instances on record in the former case, found that in those days the market value of the land in that area was Rs. 375/- per Acre i.e. per Guntha. The sale instances relied upon in that case were of the year 1976 and of later part of 1975. In the year 1976, when the notification u/s.4 came to be issued, the land being most fertile land, could be used for growing different crops and also for fruit-bearing trees, because the facility for the irrigation was also available as in the nearby field, there is a well, and water pump is installed. Taking into consideration all these aspects as well as potential

value of the land, shape, size, frontage situation, quality of land and multipurpose use, level of the land, absence of statutory bar and growing demand of the land in the area as well as benefits and advantages in the area, this court while disposing of First Appeal No. 1549 of 1979, found that the then learned Assistant Judge at Bharuch was not right in awarding compensation at the rate of Rs.325/- per Guntha, the compensation at the rate of Rs.350/- per Guntha ought to have been awarded and accordingly the compensation was awarded. The lands for which compensation at the rate of Rs.350/-has been awarded by this court are comparable as the above stated factors equally apply to the land in question for fixation of just market value. When both the lands are comparable in all respect, the award passed by this court in the aforesaid appeal is certainly comparable and so on the basis of the award passed by this court, the market value in the case on hand can well be fixed. When the award passed by this court is the cynosure, it can well be said that the compensation awarded by the lower court is not adequate, but to an extent on the lower level, and compensation is required to be awarded at par with the former case wherein this court awarded the compensation at the rate of Rs.350/-per Guntha. In this case, therefore, the compensation is required to be enhanced by Rs.25/- per Are i.e. guntha.

8. The question of interest on solatium has been raised by the learned A.G.P., submitting that it cannot be awarded on solatium. The submission cannot be overlooked as argued by Mr.Desai learned Advocate for the appellant. In view of the decision of the Apex Court in Yadavrao P. Pathade vs. State of Maharashtra (1996) 2 SCC 570, the interest on solatium is not payable, and so consistent with the law made clear by the Apex Court discussing Sec.23(2) and 28 of the Land Acquisition Act 1894, order about interest in the case has to be passed.

9. In the light of what has been discussed hereinabove, the appeal requires to be partly allowed and the compensation is required to be enhanced by Rs.25/- per guntha. Consequently the appeal is partly allowed. The respondent is hereby ordered to pay the compensation at the rate of Rs.350/- per Are i.e. guntha together with solatium at the rate of 15% p.a. and interest at the rate of 4, 1/2% (four and half percent) on the sums other than solatium from the date whereon possession was taken till payment is made with proportionate costs less already paid under the award of the lower court.

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